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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/680,039
Filing Date: October 07, 2003
Appellant(s): RIVERA, THEODORE

Bryan W. Bockhop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 22, 2007 appealing from the Office action mailed May 24, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Siegel et al. (U.S. Patent No. 5,548,718) issued August 20, 1996.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Siegel et al. (U.S. Patent No. 5,548,718).

As per claim 1, Siegel discloses a method for assessing the probability of transaction success of a business transaction that will interact with one or more software applications in a target computer environment (col. 1, lines 39-48), the method comprising the steps of:

gathering a plurality of defect data items (Fig. 3, element 312) corresponding to the first software application (col. 4, lines 45-47, *failure data, failure database*) relative to a specific business transaction in a target computer environment (col. 5, lines 1-16)

and for each of item of the gathered defect data (col. 4, lines 45-47, *failure data, failure database*), generating an item-specific predicted business

transaction failure rate (col. 5, lines 53-58) based on the defect data items (Fig. 5, element 502, *Hazard Rate*)

combining each item-specific predicted business transaction failure rate (col. 4, lines 60-64) so as to generate a combined business transaction failure rate within the computer environment (Fig. 5 and col. 5, lines 52-67 through col. 6, lines 1-24, *wherein Siegel discloses the process of generating a hits-to-failure metrics and hazard rate*)

and generating an output indicating the combined business transaction failure rate within the computer environment (Fig. 5).

As per claim 2, Siegel discloses wherein the gathered defect data includes unit test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 3, Siegel discloses wherein the gathered defect data includes functional test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 4, Siegel discloses wherein the gathered defect data includes system test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 5, Siegel discloses wherein the gathered defect data includes translation test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 6, Siegel discloses wherein the gathered defect data includes performance test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 7, Siegel discloses wherein the gathered defect data includes integration test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 8, Siegel discloses further comprising the step of outputting the predicted transaction failure rate (Fig. 5).

As per claim 9, Siegel discloses a system for assessing the probability of business transaction success that will interact with one or more software applications in a target computer environment (col. 1, lines 39-48), the system comprising:

a logic element configured to gatherer a plurality of defect data items corresponding to the first software application (col. 5, lines 7-17, *failure data*) and (Fig. 3, element 312)

a logic element (Fig. 3, element 302) configured to generate an item-specific predicted business transaction failure rate (Fig. 5, element 502, *Hazard Rate*) based on the defect data items relative to a specific business transaction in a target computer environment for each of item of the gathered defect data (col. 5, lines 53-58)

a logic element configured to combine each item-specific predicted business transaction failure rate (col. 4, lines 60-64) so as to generate a combined business transaction failure rate within the computer environment (Fig. 5 and col. 5, lines 52-67 through col. 6, lines 1-24, *wherein Siegel discloses the process of generating a hits-to-failure metrics and hazard rate*)

a circuit configured to generate an output that indicates the combined business transaction failure rate within the computer environment (Fig. 3 and 6).

As per claim 10, Siegel discloses wherein the gathered defect data includes unit test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 11, Siegel discloses wherein the gathered defect data includes functional test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 12, Siegel discloses wherein the gathered defect data includes system test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred*

Automated Testing System, ATS).

As per claim 13, Siegel discloses wherein the gathered defect data includes translation test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 14, Siegel discloses wherein the gathered defect data includes performance test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 15, Siegel discloses wherein the gathered defect data includes integration test data (col. 5, lines 7-17) and (Fig. 3, element 304, *Preferred Automated Testing System, ATS*).

As per claim 16, Siegel discloses wherein the system further outputs the predicted business transaction failure rate (Fig. 5).

(10) Response to Argument

Regarding independent claim 1, appellant argues that Siegel completely fails to disclose the limitation of "generating an item-specific predicted business transaction failure rate," and "combining each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure

rate within the computer environment," and that "Siegel discloses a system that gathers failure data relating to operation within a single software product."

The Examiner would like to point out that claim 1 recites "a business transaction **that will interact with one** or more software applications..." and "gathering plurality of defect data items corresponding to **the first software application**". The limitations of claim 1 are merely directed to a single software application and there is no mention of other software applications. Appellant argues that Siegel only gathers data relating to operation within a single software product. Siegel discloses an automatic testing system to determine software reliability through the use of tester data to reflect user usage patterns (col. 3, lines 41-63).

Note column 4, lines 62-67, wherein Siegel discloses "*The term "tester data" refers to information recorded by a recording mechanism when human testers test the current release of a software product. The recording mechanism records the number of times that each command is executed 312 for each area of the software product.*" This tester data includes the recording of the interactions of the software application in the computer environment.

Siegel's figure 4 shows an operational profile for three groups of users testing the software which has four areas. Siegel discloses (col. 4, line 67 through col. 5, line 1) that "An area of a software product is a logical grouping of commands that the software product executes." Each of these areas represents multiple commands that are executed by the users as transactions in a computer

environment. A failure rate is calculated for each command and stored in a failure database (Fig. 3, element 312). This failure rate generation by the automated system of Siegel is equal to claim 1 recited limitation of "an item-specific predicted business transaction failure rate".

Siegel further discloses of combining the above failure rates with the tester data to create software reliability metrics. Note col. 4, lines 60-62, wherein Siegel discloses "The mapping mechanism 302 creates a more accurate software reliability metric by combining tester data, failure data, and an operational profile."

Regarding independent claim 9, appellant argues that Siegel completely fails to disclose the limitation of "a logic element configured to generate an item-specific predicted business transaction failure rate" and "a logic element configured to combine each item-specific predicted business transaction failure rate so as to generate a combined business transaction failure rate,". The Examiner respectfully disagrees and would like to point out to figure 3, which shows the mapping mechanism 302 and the automated testing system 304 which determine the software reliability by generating failure rates.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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